

Board Members' Handbook



Cover photo courtesy of Lonnie Shull, Division of Water Quality

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An Overview of DEQ

Mission

- Safeguard public health and our quality of life by protecting and enhancing the environment.
- Implement State and federal environmental laws.
- Work with individuals, community groups, and businesses to protect the quality of our air, land and water.

Brief History

- 1990: Governor Norm Bangerter proposes the formation of a Utah Department of Environmental Quality from the Division of Environmental Health at the Utah Department of Health.
- 1991: Bill passes the Legislative Session and DEQ is officially inaugurated on July 1. Six Divisions: Air Quality, Drinking Water, Environmental Response and Remediation, Radiation Control, Solid and Hazardous Waste, and Water Quality
- 2009: Amanda Smith becomes DEQ's fourth Executive Director

DEQ Divisions

Air Quality: The Division's role is to protect public health and the environment from the harmful effects of air pollution through programs which:

- monitor pollutant levels;
- issue and update permits;
- conduct onsite compliance inspections;
- work with stakeholders to develop and implement regional plans to attain and maintain the National Ambient Air Quality Standards;
- provide technical assistance to small businesses;
- regulate the lead and asbestos programs; and,
- provide financial assistance through its clean fuels program.

Its authorities include the Utah Air Conservation Act and delegated programs of the Federal Clean Air Act. The Division includes 98 employees and is funded by fees for air quality permits, EPA grants, and State general fund monies.

Drinking Water: The Division regulates Utah's 1,010 public drinking water systems, by implementing rules relating to source development, treatment, storage, and delivery of drinking water meeting national water quality requirements. This is accomplished through the following programs, as required by State and federal law:

- implementing a source protection program;
- evaluating engineering designs of drinking water facilities prior to construction;
- implementing water quality and monitoring requirements;
- training and certifying system operators;
- providing technical and financial assistance;
- implementing a cross-connection control program;
- periodically inspecting water utilities; and,
- initiating enforcement actions, when necessary.

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Its authorities include the Utah Safe Drinking Water Act, the Water Development Coordinating Council Act, and delegated programs under the Federal Safe Drinking Water Act. The Division has 40 employees and is funded by federal grants, legislative appropriations, and fees.

Environmental Response and Remediation: The Division registers and conducts compliance inspections for Utah's underground storage tanks (USTs). It helps revitalize communities and return contaminated property to a state of beneficial use by implementing waste cleanup plans under the Superfund, Voluntary Cleanup, Brownfields, and Petroleum Brownfields programs. It manages the DEQ Emergency Notification System and Community Right to Know programs.

Its authorities and responsibilities include:

- Subtitle I of Resource Conservation and Recovery Act (Underground Storage Tanks)
- The Utah Underground Storage Tank Act
- The Comprehensive Environmental Response Compensation and Liability Act (Superfund)
- The Emergency Planning and Community Right to Know Act (SARA Title 3)
- The Hazardous Substances Mitigation Act
- The Illegal Drug Operations Site Reporting and Decontamination Act
- The Voluntary Release Cleanup Program Act
- The Uniform Environmental Covenants Act

Superfund is a non-delegated federal program that affords “meaningful and substantial involvement to States.” DEQ, through the Division, manages Utah's involvement in federal Superfund actions within the State.

The Division includes 65 employees and is funded by federal funds, State general funds, and fees from UST registration, petroleum surcharge, operator certifications, and reimbursements for cleanup oversight.

Radiation Control: The Division works to assure Utahns the lowest possible exposure to any form of radiation through programs which focus on:

- limiting exposure to the lowest reasonably achievable levels necessary to accomplish medical procedures and to protect the general public and radiation workers; and,
- minimizing exposure from the generation, movement, remediation, and disposal of radioactive materials.

The Division issues licenses and conducts compliance inspections at a variety of locations ranging from medical and dental facilities to uranium mills and the EnergySolutions disposal facility near Clive, Utah. It also provides education to building/real estate-related industry and to the general public on indoor radon-related issues.

Its authorities include the State Radiation Control Act and delegation of programs under the Federal Low-level Waste Policy Act and portions of the Federal Atomic Energy Act.

The Division includes 33 employees and is funded by fees from radioactive waste disposal, x-ray machine safety inspections, and the registration of x-ray and radioactive materials used in

An Overview of DEQ

health care, industrial, and institutional settings. It also receives State general funds and a small amount from a federal grant in support of the indoor radon program.

Solid and Hazardous Waste: The Division ensures the proper management of solid and hazardous waste through programs which focus on issuing and updating permits, conducting onsite compliance inspections, managing cleanup and restoration of contaminated sites, and providing technical assistance and education in the following areas:

- solid and hazardous waste treatment, storage, and disposal facilities;
- recycling – waste tires, used oil, household waste, and e-waste;
- solid and hazardous waste generation and management, including remediation of contaminated sites;
- commercial, private sector, and federal facilities; and,
- chemical weapons destruction.

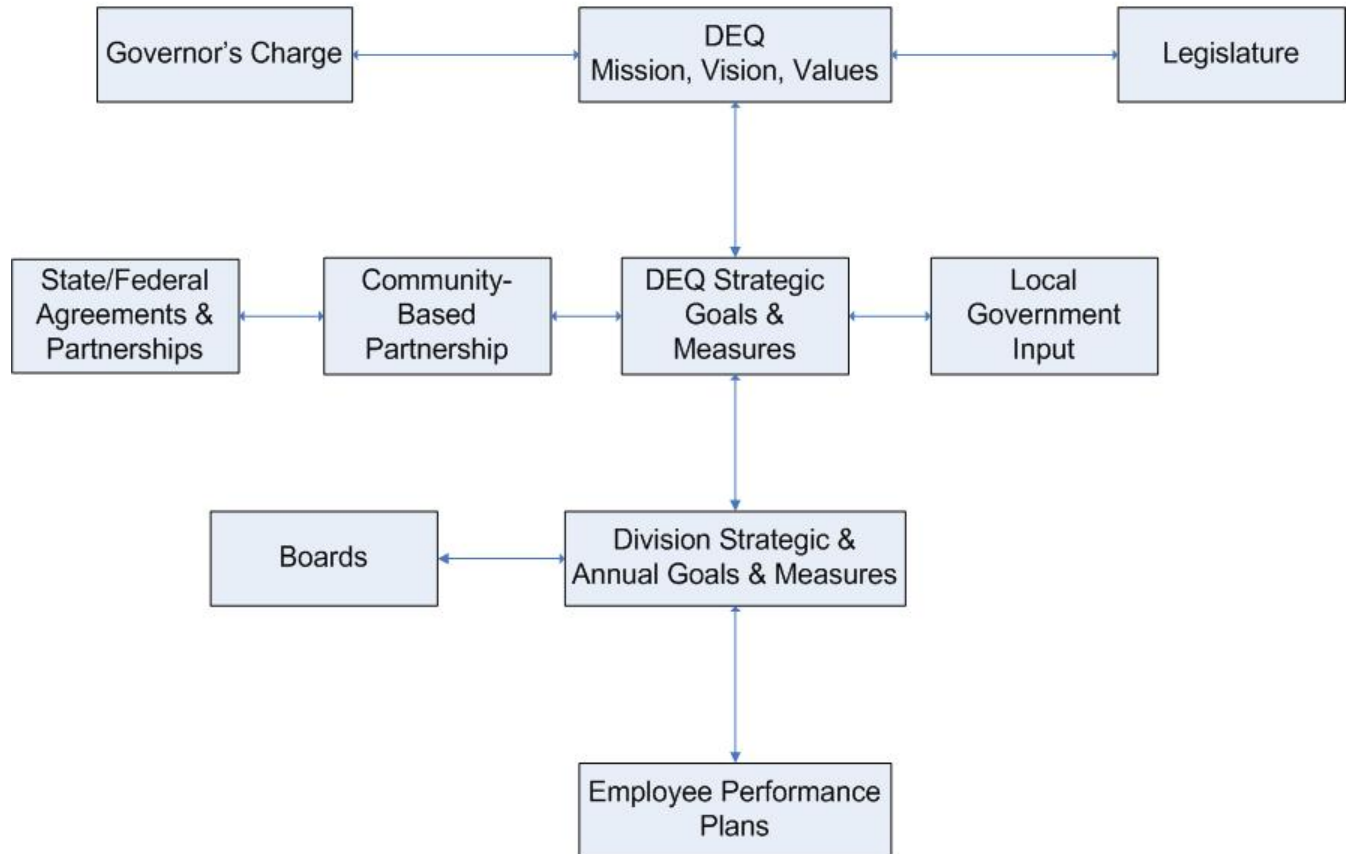
Its authorities include the Utah Solid and Hazardous Waste Act, the Utah Used Oil Management Act, the Waste Tire Recycling Act, and delegation of authority under the Federal Resource Conservation and Recovery Act (RCRA). The Division has 49 employees and is funded by fees for waste disposal, fees for plan review and permitting services, an EPA grant, cooperative agreements with the U.S. Army, and fees on oil and tires.

Water Quality: The Division protects public health and all beneficial uses of water by maintaining and enhancing the chemical, physical, and biological integrity of Utah's waters. Division staff:

- develop and implement water quality standards;
- monitor and assess the quality of lakes, rivers, and ground water;
- issue and update discharge permits;
- inspect facilities to assure compliance;
- develop watershed plans and conduct other water quality special studies; and,
- administer grant and loan programs to improve water quality.

The Division includes 68 employees and is funded by federal grants, legislative appropriations and fees. The Division's authorities include the Utah Water Quality Act and delegation of programs under the Federal Clean Water Act, and Section 1422 of the Federal Safe Drinking Water Act.

How We Do Business



Roles and Responsibilities

Executive Director:

- Administers the Department.
- Serves as a member of each DEQ Board; votes only to break a tie.
- Has statutory emergency powers.
- Appoints Division and Office Directors.
- Establishes programs.
- Makes final decisions on Administrative Appeals.

Deputy Director:

- Oversees Administrative Law Judge (ALJ).
- Oversees and manages District Engineers, DEQ employees working out of four rural local health departments.

Division Directors:

- Develop and administer programs.
- Develop rules for consideration by the Board.
- Issue permits, licenses, approval orders, etc.
- Oversee inspections and enforcement of Notices and Orders.
- Issue Notices of Violations, Orders, and other enforcement actions to ensure compliance.
- Act as Executive Secretary to the Board by providing administrative and technical assistance and by arranging the logistics of Board meetings.

The Board:

- Acts as a body. An individual member may not speak or act for the Board unless so authorized by a majority vote taken at a meeting of the Board
- Establishes rules within the constraints of statutory authority.
 - Proposed rules:
 - Initiated by the staff, Board, or public.
 - Considered by the Board and approved for public comment.
 - Published in the State Bulletin to open comment period.
 - 30 day (or more) public comment period.
 - Public hearing may be mandatory or discretionary.
 - Staff reviews comments and may suggest rule changes.
 - Board discussion and action on the rule.
 - Final rule published with an effective date.
- Requests information on a specific permit or issue from the Division.
- Requests investigation by the Division.
- May respond to public inquiry.
- Considers issues or concerns initiated by the Division, Board, or public.
- May develop sub-committees to work on specific issues.

The Board Chair:

- Conducts the Board meetings, ensuring that order is maintained and that applicable policies are followed.
 - Ensures the meeting remains effective which may, at times, involve controlling the Board and/or the audience.
 - Ensures conflict of interest policy is practiced.
- As appropriate, acts as spokesperson for the Board when contacted by the media and when authorized to speak for the group by a vote of the Board.

All Board action must occur in an open, public meeting.

Roles and Responsibilities

Code of Conduct

All Board members are expected to:

- Understand that Boards are a part of the Executive Branch of the government and are accountable to the Governor through the DEQ Executive Director. Boards are responsible for policy direction or advice regarding policies and should not be concerned with the day-to-day administration of DEQ.
- Agree to make your Board assignment a priority and devote an appropriate amount of time and energy to the assignment.
 - By accepting this appointment, you have agreed to prepare for, attend, and actively participate in all board meetings.
 - You have been selected because of your expertise and/or to represent a particular constituent group. Your perspective is critical to the overall success of the Board.
 - Learn about your Board and the specific role you play as a member.
 - Represent your constituency by communicating with and listening to them.
 - Research issues and form reasonable opinions based on facts.
 - Maintain a statewide perspective. Your decisions affect all citizens in Utah and you are responsible to keep the best interest of the public in mind.
 - Personal issues may arise which, understandably, prevent your attendance. However, if you are frequently unable to attend a majority of the meetings, the Department may ask that you be replaced to ensure the overall success of the Board.
- Know about the authority- and the limits of the authority - your Board has in shaping public policy. Respect that authority and work within the statutory framework.
- Understand and sign the conflict of interest and ethics form and carefully avoid conflicts as the result of your Board appointment.
 - When issues arise that present a potential conflict¹, it is your responsibility to declare the conflict and then orally disclose the conflict at the beginning of the discussion. Depending on the conflict, it may be appropriate that you abstain from participating in the discussion and/or the vote.
 - The Board Chair has the responsibility of ensuring that this is practiced, consistent with DEQ policy.
- Maintain a good working relationship with fellow Board members, Board staff, Department administration, and the Governor's Office.

¹ See also Conflict of Interest summary on page 12.

Roles and Responsibilities

Characteristics of an Effective Board Member

- Is committed to the public and the mission of the Board.
- Has experience dealing with the values, vision, and long-term interests of Utah's citizens.
- Possesses well-developed civic, interpersonal, and professional sensitivities and skills.
- Has the ability to assemble and evaluate information and to communicate personal views with honesty, directness, and integrity.
- Willing to share power and negotiate fairly, to affirmatively participate in Board discussions and decision-making, to delegate or allow others to make decisions as needed, and to acknowledge the staff's expertise in implementation of policy.
- Has the ability to think in terms of systems and contexts and is willing to do all required "homework" to develop a sound understanding of Board subject matter.
- Comes to each Board meeting prepared by reading and understanding the contents of the meeting's Board packet.
- Actively participates in discussions, unless a conflict of interest exists.
- Perform duties with independent judgment and courage, in good faith, and with integrity.

DEQ Boards

DEQ Board Make-up

- Executive Director or designee as a non-voting member (except in the case of a tie).

Plus, by Board, the following eight voting members:

Air Quality Board *(Effective March 1, 2013)*

- An air quality expert, not connected with industry, who is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training or experience;
- two non-federal government representatives;
- a mining industry representative;
- a fuels industry representative;
- a manufacturing industry representative;
- someone from the public who represents either an environmental or community interest nongovernmental organization; and,
- someone from the public trained and experienced in public health.

Drinking Water Board *(Effective May 1, 2013)*

- A Utah-licensed professional engineer with expertise in civil or sanitary engineering;
- two elected officials from a municipal government involved in the management or operation of a public water system;
- an improvement, water conservancy, or metropolitan water district representative;
- a representative from an entity that manages or operates a public water system;
- a representative from either the state water research community or an institution of higher education that has comparable expertise in water research to the state water research community;
- someone from the public who represents either an environmental or community interest nongovernmental organization; and
- someone from the public trained and experienced in public health.

Radiation Control Board *(Effective July 1, 2012)*

- A health physicist or a radiation safety professional;
- two non-federal government representatives;
- a radioactive waste management industry representative;
- an uranium milling industry representative;
- a regulated industry representative knowledgeable about radiation control regulatory issues;
- someone from the public who represents either an environmental or community interest nongovernmental organization; and
- someone from the public trained and experienced in public health.

DEQ Boards

Solid and Hazardous Waste Control Board (*Effective March 1, 2013*)

- A Utah-licensed professional engineer, not connected with industry, who is an expert in waste management matters;
- two non-federal government representatives;
- a manufacturing, mining, or fuel industry representative;
- a private solid or hazardous waste disposal industry representative;
- a private hazardous waste recovery industry representative;
- someone from the public who represents either an environmental or community interest nongovernmental organization; and
- someone from the public trained and experienced in public health.

Water Quality Board (*Effective March 1, 2013*)

- A water quality expert, not connected with industry, who is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training or experience;
- two non-federal government representatives;
- a minerals industry representative;
- a manufacturing industry representative;
- an agricultural and livestock representative;
- someone from the public who represents either an environmental or community interest nongovernmental organization; and
- someone from the public trained and experienced in public health.

DEQ Board Members

- Appointed for four years; may serve more than one term. Initially, some terms may be for two years in order to stagger the terms of the overall Board.
- Remain in their position until a new member is appointed but, by statute, this can be no more than 90 days.
- Must be politically diverse; no more than five people can be from the same party.
- Required to be interested in and knowledgeable about the subject matter – air quality, drinking water, radiation control, solid and hazardous waste, or water quality.
- Attend and actively participate in Board meetings.
- May not receive compensation or benefits for service but may receive per diem and travel expenses.
- Comply with all applicable statutes, rules and policies, including conflict of interest rules.

Governmental Immunity of Utah (UCA §63G-7)

As an appointed member of a Board:

- You are entitled to protections of Governmental Immunity Act.
- Performing duties and functions within the scope of your appointment will not ordinarily expose you to personal liability for those actions UNLESS you act or fail to act due to fraud or malice.

For more information, contact the Division Director or an Assistant Attorney General assigned to work with DEQ.

Conflicts of Interest and Ethics

Conflict of Interest

- Board selection criteria implicitly recognize that a member's interest may be impacted by Board action. In fact, specific Board members are chosen because of their affiliation with stakeholder groups or organizations.
- Any potential conflict of interest relevant to the interests of the Board must be disclosed. A potential conflict of interest will be specific to a matter that is before the board, and arises if:
 1. the board member's participation may be prohibited under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act; or
 2. the board member's participation may constitute a violation of constitutional due process under the Utah or United States constitutions.
- If a conflict arises, it is incumbent upon you, as a Board member, to disclose the conflict. The Board will then have the opportunity to discuss the nature of the conflict and chose a path forward. It may determine:
 1. The conflict doesn't prohibit your participation in the discussion of or vote on the issue.
 2. The conflict is such that your participation in the discussion would be okay but is such that you should abstain from voting.
 3. The conflict is such that you should exclude yourself from participation in the discussion and abstain from voting.
- In evaluating a potential conflict, the Board is to consider:
 1. the nature of the matter before the Board;
 2. the nature of the potential conflict; and
 3. the Legislative intent that the Board reflect balanced viewpoints.

Keep in Mind

- A potential conflict of interest is, generally:
 - Any direct and immediate interest of relationship, including financial interest, with:
 - persons or businesses regulated by or directly affected by the decisions of the Board; or
 - persons or organizations which may present requests of issues before the Board.
 - Inclusive of the following:
 - the interest of a spouse or other members of the immediate family/household; or,
 - the interest of any other person "constructively controlled" by the Board member.

Conflicts of Interest and Ethics

- Some relationships and interests have more potential conflicts than others. This includes relationships or interests with persons, business enterprises, or nonprofit, professional, charitable, religious, social, educational, recreational, environmental, public service, or civic organizations with which you:
 - are connected as a member, employee, officer, owner, director, trustee, partner, advisor or consultant;
 - have any continuing financial interest as a creditor or through ownerships or stocks, bonds, or other securities, ownership of real property or rights in lands, or through a pension or retirement plan, shared income, or otherwise; or,
 - are indebted to financially.
- Courts have determined that a decisionmaker's participation in rulemaking is prohibited by due process considerations if the decisionmaker's mind is unalterably made up before considering the matter.
- Some interests and relationships which, because of their nature, are insignificant. The financial interest may be so small or the relationship so remote that it does not present an actual conflict.
- If in doubt, ask an Assistant Attorney General assigned to DEQ.

NOTE: The information in this section reflects the requirements of a proposed rule governing board member conflicts of interest. The final rule may be different; all board members be provided with a copy of the final rule.

Conflicts of Interest and Ethics

Public Officers' and Employees' Ethics Act (UCA § 67-16)

Note: The following is only a summary. Board members should be familiar with all of the Act's requirements. The entire Public Officers and Employees' Ethic Act may be found online at: <http://www.le.utah.gov/UtahCode/section.jsp?code=67-16>

- Disclosure is required when a Board member has a substantial interest in a regulated business.
 - Disclose position held and the precise nature and value of the interest.
 - Not required if the value is less than \$2,000.
 - Update if there is a significant change in position or value
 - A “substantial interest”:
 - Defined as legal or equitable ownership by an individual or an individual's spouse or minor children of at least:
 - 10% of the outstanding capital stock of a corporation; or
 - 10% interest in any other business entity
- Disclosures must be in writing. See UCA § 67-16-7 for information.
- No public officer shall:
 - accept employment or engage in any business or professional activity that he may reasonably expect would require or induce him to improperly disclose controlled information;
 - improperly disclose or use controlled, private, or protected information acquired by reason of his position in the course of official duties to substantially further his personal economic interest or to obtain special privileges or exemptions for himself or others;
 - use, or attempt to use, his position to substantially further personal economic interest or to secure special privileges or exemptions for himself or others;
 - accept employment that would impair his independence or judgment or interfere with the ethical performance of his public duties;
 - receive, take, seek, or solicit, directly or indirectly, for himself or another, a gift of substantial value or substantial economic benefit tantamount to a gift:
 - that would tend to improperly influence him in the discharge of his duties;
 - that the person knows, or a reasonable person in that position would know under the circumstances, is primarily to reward the person for the official action taken; or
 - if he recently has been, or is or will be, involved in a government action affecting the donor or lender unless a disclosure of the gift, compensation, or loan has been made in the manner described above.
 - have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties; or
 - donate to, or demand donations of, property, money, or services on a condition of granting a permit, approval, or authorization.

Conflicts of Interest and Ethics

- Economic benefit tantamount to a gift includes:
 1. a loan at an interest rate that is substantially lower than the commercial rate for similar loans; and,
 2. substantially higher compensation received for private services than the fair market value of those services.

Excluded is an occasional non-pecuniary gift of a value less than \$50, an award publicly presented in recognition of public service, any bona fide loan made in the ordinary course of business, or a political campaign contribution.

For More Information:

Be familiar with the prohibitions in the following sections of the Ethics Act:

- § 67-16-4 - Improperly disclosing or using controlled information; using position to secure privileges; accepting employment which would impair independence of judgment or ethical performance.
- § 67-16-5 - Accepting gifts, loans, or compensation.
- § 67-16-5.3 & 5.6 - Requiring or offering a donation, payment or service to the agency in exchange for an approval.
- § 67-16-6 - Receiving compensation for assistance in a transaction involving the agency

If you have questions, talk to the Division Director or an Assistant Attorney General assigned to work with DEQ.

Board Meetings

Attendance

Governor Herbert expects his appointees to make Board meetings a priority by attending all, or a majority of, scheduled meetings.

Open and Public Meetings Act (UCA §52-4)

DEQ Board meetings are open, public meetings as defined under Utah's Open and Public Meeting Act.

Board Actions

The Board can take actions only in a meeting that is open to the public and only on issues that are listed as agenda items.

- The agenda must be posted at least 24 hours before a meeting.
 - The date, time and place of the meeting must be stated.
- "Meeting" is defined as:
 - A convening of a simple majority of the Board for matters over which the Board has jurisdiction or advisory power.
 - It includes electronic meetings, workshops and Executive Sessions.
 - A quorum – or at least five - members are present.
- A majority vote is required to take action.

Closed Meetings

Board meetings may be closed only in limited circumstances. The Law limits closed meetings to the following topics:

- Discussion about "the character, professional competence, or physical or mental health of an individual."
- "Strategy sessions to discuss collective bargaining."
- "Strategy sessions to discuss pending or reasonably imminent litigation." If the Board were sued, for example, this exception would allow the Board to meet with its attorneys to plan its strategy or settlement response in a particular piece of litigation. This exception would not, however, allow a closed meeting for non-strategy sessions, such as simple reports about a pending lawsuit. Nor would this exception allow the Board to exclude the public from the Board's discussions about a controversial topic that could conceivably result in some future litigation. Unless the threatened litigation is "reasonably imminent" and the Board needs to discuss its litigation strategy, the statutory exception does not apply.
- "Strategy sessions to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms."

Board Meetings

If a Board closes a meeting to discuss “the character, professional competence, or physical or mental health of an individual”, the Board Chair must sign a sworn affidavit to that effect. If the purpose of the closed meeting is to discuss any other statutorily-permissible topic, the Board must either record or keep detailed written minutes of the closed session. If a judge later decides that the closed meeting was unlawful, the tape or the minutes must be released.

Closed Meetings Are Never Required

The Open Meetings Act does not require any meeting to be closed and the Board should consider whether it is in the public interest to conduct the discussion in secret. For example, the statute allows a closed meeting to discuss the character or professional competence of an individual. This provision protects that individual’s privacy interests. If the individual actually prefers to have the discussion conducted openly, however, the Board may not be justified in relying on this statutory basis for a closed meeting.

No Final Decisions or Actions in a Closed Meeting

The Act states that “no . . . resolution, rule, regulation, contract or appointment shall be approved at a closed meeting.” Any actual votes or decisions must be made in an open meeting.

Procedures for Electronic Meetings

Boards may conduct meetings by “telephone, telecommunications, or computer conference” as long as the Board complies with statutory requirements for giving public notice and providing each Board member an opportunity to participate in the electronic meeting. DEQ’s procedures governing electronic meetings can be found at R305-2.

Penalties for Violating the Open Meetings Act

If a court finds that a public body has violated the Open Meetings Act, the court may declare that any final action taken at the meeting is void, and may order the Agency or Board to comply with the statute. The court may also order the Agency or Board to pay the opposing party’s attorney’s fees and may order the public body to release the tape or minutes about the closed meeting.

Board Meetings

Parliamentary Procedure at a Glance (Based on Roberts' Rules of Order)

To do this	You say this	May you interrupt?	Is a second required?	Is the motion debatable?	Required vote
*Adjourn meeting	"I move the meeting be adjourned"	No	Yes	No	Majority
Recess meeting	"I move the meeting be adjourned until. . ."	No	Yes	No	Majority
*Make a personal request	"Point of privilege"	Yes	No	No	No vote
*Suspend further consideration	"I move to table the motion"	No	Yes	Yes	Majority
End debate	"I move the previous question"	No	Yes	No	2/3 vote
Postpone consideration	"I move this matter be postponed until. . ."	No	Yes	Yes	Majority
Have something studied further	"I move this matter be referred to a committee"	No	Yes	Yes	Majority
Amend a motion	"I move this motion be amended by. . ."	No	Yes	Yes	Majority
Introduce new business	"I move that. . ."	No	Yes	Yes	Majority
*Object to something	"Point of order"	Yes	No	No	No vote Chair only
Request Information	"Point of information"	Yes	No	No	No vote
*Ask for a vote by actual count to verify a voice vote	"I call for a division of the board"	No	No	No	No vote
*Object to discuss a matter	"I objected to consideration of this matter"	Yes	No	No	2/3 vote
*Take up a matter previously tabled	"I move to take from the table. . ."	No	Yes	No	Majority
*Reconsider a previous action	"I move to reconsider the action relative to. . ."	Yes	Yes	Yes	Majority

*Motion cannot be amended

Rulemaking Authority

Utah Administrative Rulemaking Act (UCA § 63-46)

Roles

- The Division of Administrative Rules (DAR) oversees all state agency rulemaking.
 - Its role is limited to the procedural aspects:
 - rules to direct the process; and
 - a manual to assist agencies in writing, formatting, and filing their rules.
 - DAR publishes the *Utah State Bulletin* (Bulletin), a semi-monthly publication which includes proposed rules, rules analyses, notices of effective dates, and review notices.
 - It also compiles, formats, indexes, and publishes all effective rules in the *Utah Administrative Code* (similar to the *Code of Federal Regulations* or CFR process.)
 - Changes are codified on a monthly basis.
 - Rules are available electronically at www.rules.utah.gov.
 - This constitutes the official administrative code of the State.
 - It is not the same as the *Utah Code Annotated* (UCA), a compilation of laws enacted by the Utah Legislature.
 - To avoid confusion, all administrative rules are numbered beginning with an "R."
- DEQ files all new rules, all proposed rules changes, or five-year reviews of existing rules with DAR.
- The Board and DEQ Division focus on the content of the rules.
 - Divisions draft rules for Board consideration.
 - Boards perform all formal rulemaking actions for the DEQ programs.
 - Boards are the responsible authority for the rule language.
 - In this role, Boards are considered an agency of the executive branch
- Members of the public can petition a Board to undertake rulemaking to address a specific concern or issue.

Process

- Rulemaking is the "regulatory" power of an agency of the executive branch. It is used to:
 - establish standards or procedures; or
 - clarify a statute in order to carry out a mandate.
- A DEQ Division prepares either a proposed change to an existing rule or a new rule.
 - The Division completes a rule analysis form to accompany the proposed action. It also indicates a potential effective date
 - The proposal is then filed with DAR.
 - If a statutory provision requires the rulemaking, the agency must file no later than 180 days from the effective date of the statutory provision.
 - A copy of the rule analysis form and rules are submitted to the Governor's Office of Planning and Budget (GOPB) for review.

Rulemaking Authority

- DAR publishes the rule analysis form and the proposed rulemaking action in the Bulletin.
 - Rules filed by the first of the month are published in the Bulletin issued on the fifteenth of the month
 - Rules filed by the fifteenth of the month are published in the Bulletin edition issued on the first of the following month.
- Publication initiates the formal rulemaking process.
 - There is a minimum 30-day public comment period when agency receives written comments.
 - A public hearing may be held and is only required if mandated by federal law or regulation or if requested by another state agency, ten interested persons, or an organization with no fewer than ten members; and
 - A written request is received within 15 days of publication.
 - Hearings are not adjudicative hearings governed by the Administrative Procedures Act. The agency is not compelled to act according to comments received.
 - Following public comment, the proposed rule is brought back to the Board for final adoption.
 - The Board can adopt the rule as originally proposed or make changes.
 - If changes are substantive, the newly amended rule is re-filed
 - A new rule analysis form; noted as a change in a proposed rule.
 - The amended rule is republished which begins a 30-day public notice period. This is NOT a public comment period.
 - The rule may not become effective until after the 30-day notice period.
 - If the changes are nonsubstantive.
 - The rule is marked accordingly and submitted to DAR.
 - This revision is not published in the Bulletin.
 - Board adopts rule and sets an effective date
 - No fewer than 30 days and no more than 120 days from the date of publication of the proposed rulemaking.
 - Effective date may be the same as or different from the "potential" effective date identified on the original rule analysis form.
 - Notice of the effective date submitted to DAR
 - DAR publishes the effective date in the next issue of the Bulletin. In order to meet the 120-day provision of the Rulemaking Act, the effective date may occur before the notice of the effective date is published in the Bulletin.

Rulemaking Authority

Rulemaking Hearings (R-15-1-5 (2)-(4))

- The Board appoints a hearing officer for a particular hearing.
- The Hearing Officer:
 - Opens hearing at the announced time and place.
 - Explains the subject and purpose of the hearing.
 - Invites “orderly, germane comment” from those present.
 - Conduct the hearing as an open, informal, orderly, and informative meeting.
 - Oaths, cross-examination, and rules of evidence are not required
 - Permits comment for a minimum of one hour.

(Note: If no one present at the hearing wishes to make formal comments, the hearing record may be closed temporarily to discuss the proposal off the record, but the record must be reopened at the end of the one hour mandatory hearing time to formally end the hearing.)
 - May set time limits for speakers.
 - Ensures equitable use of time.
 - May extend or continue hearing to another day, as necessary.
 - Invites written comment to be submitted at the hearing or after the hearing, within the comment period.
 - Written comments are attached to the hearing minutes.
- The Agency must have a representative in attendance that is familiar with the rule at issue and can respond to requests for information.

Adjudicative Process

Adjudicative Proceedings

The purpose of an adjudicatory proceeding is to determine whether the Division Director acted in accordance with the law (statute and rules). The process is similar to and consistent with hearing procedures for EPA environmental permitting programs

Process

- An adjudicative hearing is an appellate-type hearing limited to a review of the administrative record.
 - Record is developed by the agency during the application and public comment process. (Supplements are allowed under certain provisions.)
 - To raise an issue on appeal, the issue must have been raised by the challenger during the public comment process.
 - Comments must be supported with sufficient information or documentation to allow the Director to fully consider the substance (not through a link to a website or other similar reference.)
- Proceedings may be initiated for actions such as:
 - Permits, notices of violation or penalty assessments issued by the Executive Secretary.
 - Third-party challenge to permits and other Executive Secretary action.

Roles

- An administrative law judge (ALJ) hears the permit/license appeal and makes a recommended decision to the Executive Director.
- The Executive Director reviews ALJ's recommended decision and adopts, adopts with modifications, rejects, or returns to the ALJ for further action as directed.
- The Appellate Court Review of Agency's decision is based on the hearing record. The Court gives substantial deference to Agency expertise on factual findings.

Records

Utah Government Records Access and Management Act or GRAMA (UCA §63-2)

Overview

- DEQ is required to retain government records in accordance with an approved retention schedule and to provide copies of, or permit access to, public government records in its possession, upon written request.
- DEQ places a high priority on assisting the public when there is a request to view our files. GRAMA requires that the request be responded to within 10 working days of its receipt.

What This Means for Board Members

- Promptly provide the staff with a copy of:
 - Any record created as part of your official service; and
 - Any record received from outside DEQ in the course of your official service.
 - This includes anything given by constituents, advocates or others that deal with Board business or official duties.
- Immediately forward any request you receive under GRAMA to agency staff.
 - Staff will analyze and write a response, as appropriate.
 - Staff may contact you to ask for documents in your possession that may need to be included in the response.
 - Retain – or turn over to staff – any documents that may be subject to request until all appeals have expired.

Exceptions

- Some legal and practical exceptions to this rule include:
 - Records received from staff supporting the Board. Staff will be responsible for complying with GRAMA requirements for these records.
 - Records received from sources outside the agency, copies of which are also given to staff supporting the Board.
 - Notes and daily calendars prepared for personal use. These are not records under UCA §63-2-103 (18) (b) (vii).
 - Junk mail or commercial publications. These are not records under UCA §63-2-103 (18) (b) (v).

Housekeeping

Compensation

- You are allowed meeting per diem and mileage reimbursement, based on current state rates and dependent on the agency's budget
- To be paid, you will need to provide the following information to Human Resources:
 - Current and previous names and correct spelling.
 - Mailing address, including city/state/zip.
 - Home and alternate telephone numbers.
 - Employment eligibility such as citizen, lawful permanent resident (alien #) or alien authorized to work.
 - Ethnic group.
 - Military status.
 - Emergency contact information such as name, address including city/state/zip, home and work phone numbers, and the person's relationship to you.
 - A clear and legible copy of your current driver's license.
 - A clear and legible copy of your Social Security card.
- Travel arrangements and all expenditures must be arranged and approved by DEQ in advance.
 - Traveler must submit appropriate reimbursement forms and receipts.
 - Your staff contact person can help you.

Your Public Contact Information

- As a public body, Board contact information is posted on the Web.
 - Let your staff contact person know what information you want posted.

Term Expiration and Reappointment

- The Governor makes final determination on all appointments and reappointments.
 - A Board member may be allowed to serve more than one term.
 - A review is conducted before a reappointment is extended.
- As your expiration date nears, notify Board staff and Governor's Office if you would like to continue.

Working with People

Working with the News Media

Expectations:

- The Board is doing the public's business.
- The public has a right to know how public business is conducted.
- High standards of professionalism help ensure that the Board's work is correctly represented.
- All media inquiries should be handled first by the Communications Director/PIO – even when you may be asked to respond.

Guidelines

- DEQ's Communication Director is the Agency's PIO and will work closely with you in the event you are contacted by the media.
- Media requests should be addressed with the following guidelines in mind:
 - Board Members – other than Board Chairs – generally do not act as the spokespeople for the agency or the Board.
 - The Executive or Deputy Director or the Communication Director is generally the “official” department spokesperson. Likewise, the Division Director (or designee) is the “official” Division spokesperson.
 - On occasion, a Board member may be asked to give a comment to media. Please remember these critical points:
 - Whether or not to speak to the news media is a personal choice. If you chose not to answer a question, please refer the reporter to the DEQ Communication Director and she will assist the reporter in getting what is needed.
 - Recognize that you are an appointed representative. Though unintended, your comments may also reflect back on the Board, the Agency, and the Administration.
 - A Board member speaks **for** the Board only when authorized by the Board to do so.
 - Unless authorized to speak on behalf of the Board or Agency, you should refrain from comment to the press on issues handled by the Board and instead refer the reporter to the designated spokesperson.

More Help?

The Communication Director, Donna Spangler, is available for more detailed coaching/ training on working with the media. She can be reached at 801-536-4484 or dspangler@utah.gov

Working with People

Working with Stakeholders

- Stakeholder involvement is critical to effective public policymaking.
 - Special interest groups want you to understand and consider their perspective.
 - Stakeholders may add information that is “critical to the outcome.”
 - Stakeholders may also purposefully divert attention to the emotional in an attempt to delay or “kill” an issue.
 - Your challenge is to objectively listen and weigh information in making decisions.
 - Your vote needs to be based on facts and within the parameters of the rules and regulations that define DEQ’s work.
 - Each decision of the Board needs to be legally defensible.
 - Decisions can be hard, as there are times when your personal opinion and the emotion of the community do not “fit” within this framework.
- Suggestions:
 - Be proactive: Understand your constituency by reaching out to key stakeholders in the regulated, environmental, and public health communities.
 - Be honest: Your respect contributes to the Board’s effectiveness. Avoid skirting conflict by telling people what they want to hear or hinting at more than you are able to deliver. The impact is only temporary and can be more costly in the long run.
 - Listen empathetically: At the most basic level, everyone wants the same thing: to be heard AND understood. Empathy implies respect. Agreement or disagreement is separate.
 - Listen objectively and hear all potentially interested perspectives. Because you are in a position on influence, you should also be conscious about how your behavior may cause possible perceptions of bias.
 - Use good judgment: The loudest and/or the most visible may not be the most representative. Sometimes you just have to make the hard decision.

More Help?

Renette Anderson is available for more specific coaching on communication skills and working with stakeholder groups. She can be reached at 801-536-4478 or renetteanderson@utah.gov.

Working with People

10 Tips for Effective Communication

1. Set the tone. You help establish, or destroy, your own and your Board's credibility by your actions. People will, in turn, live up – or down – to your expectations.

Be a leader. A bad member can undermine a Board's effectiveness; a good member can help create enthusiasm and commitment.

Listen more than you talk. Stay curious and engaged.

Suspend judgment long enough to really hear what is being said – and, during a group discussion, encourage others to do the same.

React to ideas, not people. Don't make accusations about intention. Ask probing questions to delve more deeply and collect more information, rather than making assumptions based only on "surface traits".

Don't advocate your position, or tear down elements of a topic of discussion, at the expense of another person.

If you have asked for feedback, don't bring things to a conclusion until you have honestly absorbed multiple perspectives and ideas. Sometimes being able to communicate is more important to the group than what the final answer ends up being.

See the flip side of unfavorable traits:

Someone who seems overly strident or judgmental may simply have at his core the intention of making a positive difference.

Someone who seems jittery might actually be nervous because she wants whatever is being requested very much.

When you react, be honest with yourself about your intentions and then make sure your reaction is appropriate to the circumstance and will get you what you're after. If you automatically conclude that you are right and others are wrong, you minimize your own effectiveness as a leader as well as an opportunity to solve the "real" problem and/or to discover that "next great idea."

2. You have talked (or written) when you use your voice (or your computer.) You have communicated when the person understands. Experts agree that the ONLY message that counts is the message that was received.

3. People "hear" in different ways. Consider what you know about your fellow Board members and then give your message in a way that optimizes your likelihood of being heard.

Working with People

4. Like it or not, you are competing for attention with whatever else is going on in their world. If the message is very important, people generally need to hear it more than once to remember.

5. If the message is very important, the most effective thing you can do is to tell someone in person and then follow up in writing.

6. Follow-up to make sure what they “heard” is what you “said.” One of the biggest communication problems is the assumption that a message has been understood. Follow-up often finds that messages are unclear or misunderstood.

7. Avoid mixed messages.

Be honest with yourself about your intention so that your body language and/or tone don’t override what your words are trying to communicate.

“I don’t care how you handle it” gives the person some latitude. If you can’t – or are unwilling to – give that latitude, then recognize you do care and structure your message differently.

8. Be sensitive to “wrong rock” (or “I’m not sure but I’ll know it when I see it”) syndrome. And, when you must send someone after that elusive rock, be sensitive to his/her frustrations

9. Balance the grapevine. Don’t ignore it but don’t let it consume you.

10. ALWAYS allow someone else his or her humanity – even if it doesn’t measure up to your personal standards of perfection. You may end up needing the same consideration one day.

Working with People

Tips for Handling Conflict

- Let the person vent.
 - Acknowledge the anger/frustration and focus on the issue (not the behavior.)
 - Maintain a calm voice. It will calm most people.
- Listen to understand rather than to find the hole in the argument.
 - Listen even if you've heard it before or think you know where the person is going.
 - Hear the message. Often it is buried in the emotion.
 - Give subtle, nonverbal feedback to indicate you are listening.
 - Avoid prejudice and other distractions.
- Before responding, briefly pause.
 - Learn to tolerate - and to use - silence.
- A careful choice of words will often diffuse anger.
 - Paraphrase what was said.
 - Ask for and listen to feedback so ensure you've "got it."
 - Empathize with and acknowledge frustration.
 - Try to determine expectations.
- Address issues without attacking people.
 - Avoid blaming words.
 - Understand what your own "buttons" are and become less sensitive. Don't trade insults.
- If you can, turn the issue into a mutual problem. Make sure you are both operating "off the same sheet of music." Try to avoid "you" and "me" positions and focus, where possible, on "we" positions.
 - Look for an area or areas where you have agreement.
 - Don't "hint" at things you won't deliver.
 - Don't create expectations and then hand the person off.
- ALWAYS allow the person an opportunity to save face.
- If nothing is working, take a break and let things cool off.
 - Arrange to speak later.
 - Ask to have the issue put into writing.

Division of Radiation Control

Mission

Protect the health and safety of Utah citizens and the environment from hazards associated with various sources of radiation by regulating their use, management, and disposal.

Regulatory Authority

Statute: Utah Radiation Control Act – Utah Code Annotated (UCA) 19-3-101, et seq.

Administrative Rules: Utah Administrative Code – Title R313

Pertinent Laws & Rules -- Webpage www.radiationcontrol.utah.gov/Rules/index.htm

Key Contacts

Division Director

Rusty Lundberg 801-536-4257 rlundberg@utah.gov

Radioactive Materials / X-ray Programs Manager

Craig Jones 801-536-4264 cwjones@utah.gov

Low-level Waste / U Mills Licensing-Permitting Manager

John Hultquist 801-536-4263 jhultquist@utah.gov

Low-level Waste / U Mills Compliance-Enforcement Manager

Phil Goble 801-536-4044 pgoble@utah.gov

Environmental Program Manager

Loren Morton 801-536-4262 lmorton@utah.gov

Administrative Support

Sonja Robinson 801-536-4252 sdrobinson@utah.gov

Webpage Information

Main webpage www.radiationcontrol.utah.gov

Radiation Control Board www.radiationcontrol.utah.gov/Board/index.htm

Programs www.radiationcontrol.utah.gov/Programs.htm

EnergySolutions www.radiationcontrol.utah.gov/EnSolutions/index.htm

Uranium Mills [www.radiationcontrol.utah.gov/Uranium Mills/index.htm](http://www.radiationcontrol.utah.gov/Uranium_Mills/index.htm)

Division of Radiation Control

Rulemaking Board – Radiation Control Board

Board members are appointed by the governor and confirmed by the Utah Senate.

Board membership consists of the following:

- DEQ executive director or an employee of the department designated by the executive director (non-voting member except to break a tie vote)

With the following eight voting members:

- One representative who is a health physicist; or a professional employed in the field of radiation safety
 - Peter Jenkins, MS, CHP
- Two government representatives who do not represent the federal government
 - Jerry Hurst – Tooele County Commission
 - Brady Bradford – Southeastern District Health Department
- One representative from the radioactive waste management industry
- One representative from the uranium milling industry
 - Scott Bird -- Kennecott
- One representative from the regulated industry who is knowledgeable about radiation control regulatory issues
 - Dick Codell, Ph.D.
- One representative from the public who represents an environmental nongovernmental organization or a nongovernmental organization that represents community interests and does not represent industry interests
- One representative from the public who is trained and experienced in public health
 - Ulrich Rassner, M.D.

Board members must be:

- A resident of Utah; and
- Knowledgeable about radiation protection as evidenced by a professional degree, a professional accreditation, or documented experience

Division of Radiation Control

Programs

In accomplishing its mission, the Division administers the following key programs:

- Radioactive materials possession, use, and transfer
- X-ray use
- Low-level radioactive waste management
 - Utah is one of eight pacific and western member states of the Northwest Interstate Waste Compact (management and control of low-level radioactive waste, see UCA 19-3-201, et seq.)
- Uranium mill operations and associated mill tailings disposal
- Indoor radon protection (primarily for public education and outreach)

Relationship to the Federal Government

Utah has entered into an agreement with the U.S. Nuclear Regulatory Commission (NRC) to have complete jurisdiction and therefore fully implement the radioactive materials, low-level radioactive waste, and uranium mills programs. In granting “Agreement State” status to Utah, the NRC transfers its jurisdictional authority. Utah radiation control rules and procedures are based on federal regulations, guidance, and other similar program related documents. Utah was granted agreement state status by the NRC for the following programs in the noted years:

Radioactive materials	1984
Low-level radioactive waste	1990
Byproduct material (e.g., uranium mill tailings)	2004

As national programs that a state may implement under an agreement between the NRC and the Governor of a State, each of these programs has specific program standards, indicators, and criteria that an Agreement State must meet, as established by the NRC under the authority of the federal Atomic Energy Act. (See Section 274, Atomic Energy Act of 1954, P.L. 83-703, 42 USC 2021).

The NRC conducts periodic, in-depth evaluations of the Division in administering these programs, as part of the NRC-Utah agreement. These comprehensive evaluations are guided by national performance criteria and indicators in order to create consistency among the states that have “Agreement State” status with the NRC as well as the four regional NRC offices that implement these programs in non-agreement states. The evaluation criteria and indicators serve as a means to document that a state not only has a well-trained and qualified staff but also can perform to meet program commitments and produce quality work products within established timeframes.

Division of Radiation Control

Radioactive Waste

Radioactive wastes are produced from the use of nuclear materials in a wide range of research work, industrial uses, electrical power generation, diagnosis and treatment of disease, and other purposes.

The materials are either naturally occurring or man-made. Certain kinds of radioactive materials, and the wastes produced from using these materials, are subject to regulatory control by the federal government or the states.

The Department of Energy (DOE) is responsible for radioactive waste related to nuclear weapons production and certain research activities. The Nuclear Regulatory Commission (NRC) and some states regulate commercial radioactive waste that results from the production of electricity and other non-military uses of nuclear material.

Various other federal agencies, such as the Environmental Protection Agency, the Department of Transportation, and the Department of Health and Human Services, also have a role in the regulation of radioactive material.

The NRC regulates the management, storage and disposal of radioactive waste produced as a result of NRC-licensed activities. The agency has entered into agreements with 32 states, called Agreement States, to allow these states to regulate the management, storage and disposal of certain nuclear waste.

The commercial radioactive waste that is regulated by the NRC or the Agreement States is of three basic types: high-level waste, mill tailings, and low-level waste.

High-level radioactive waste consists of “irradiated” or used nuclear reactor fuel (i.e., fuel that has been used in a reactor to produce electricity). The used reactor fuel is in a solid form consisting of small fuel pellets in long metal tubes.

Mill tailings wastes are the residues remaining after the processing of natural ore to extract uranium and thorium.

Commercial radioactive wastes that are not high-level wastes or uranium and thorium milling wastes are classified as low-level radioactive waste. The low-level wastes can include radioactively contaminated protective clothing, tools, filters, rags, medical tubes, and many other items.

(Source, Nuclear Regulatory Commission website,
<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0216/>)

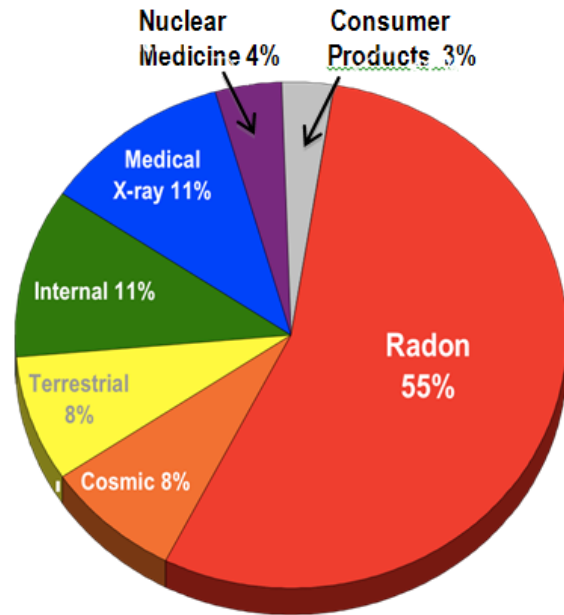
Division of Radiation Control

Regulatory Functions, Services and Regulated Facilities

PRIMARY SERVICES		FACILITIES
Licensing / Permitting	Low-level radioactive waste management facilities	EnergySolutions – Clive Facility (Tooele County)
	Uranium mill tailings operations	EnergySolutions – Clive Facility (Tooele County) Denison Mines (USA) (San Juan County), Uranium One (Garfield County), RioAlgom (San Juan County)
	Generator Site Access Program	Approx. 140 (all out of state)
	Radioactive materials (industrial, medical, institutional, and commercial uses)	206 Specific Licenses for 192 licensees 55 Facilities with General Licenses
Registration	X-Ray equipment	2,680 facilities, including hospitals, dental, chiropractic, veterinary, industrial, etc.
Inspection / Compliance Monitoring Enforcement	Low-level radioactive waste management facilities	EnergySolutions – Clive Facility
	Generator Site Access Program	Inspections at EnergySolutions (waste shipments received)
	Uranium mill tailings operations	Dennison Mines (USA), Uranium One, Rio Algom
	Radioactive materials (industrial, medical, institutional, and commercial uses)	General Licensees: 55 Other Licensees: 192
	X-Ray equipment	8,391 X-ray tubes at 2,680 facilities In FY2012, there were 2,311 X-ray tubes inspected. Inspection frequencies range from 1 to 5 years.
Radon Awareness & Exposure Mitigation	Public education and outreach, radon survey tools, mitigation assistance regarding indoor radon mitigation	Residential, public, and commercial buildings

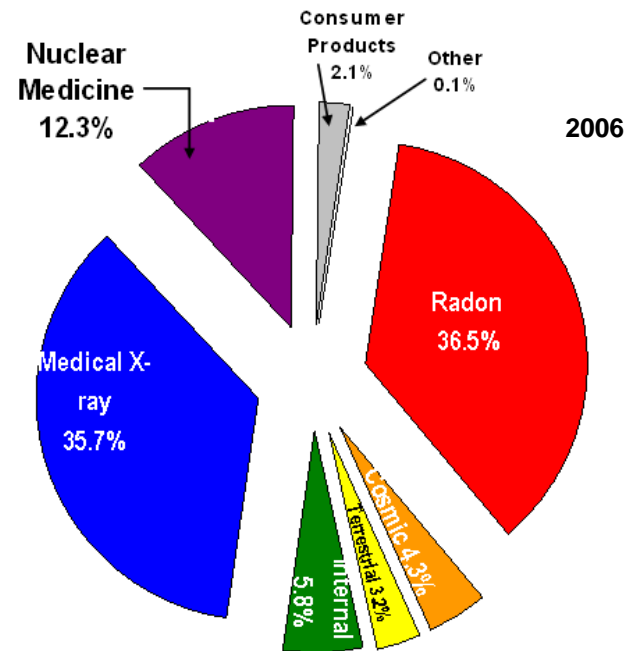
Protecting Utah citizens and the environment from sources of radiation that can be a health concern

Average U.S. Radiation Doses and Sources – Then and Now



All of us are exposed to radiation every day, both from natural sources such as minerals in the ground, and from man-made sources such as medical x-rays. According to the National Council on Radiation Protection and Measurement (NCRP), the average annual radiation dose per person in the U.S. in the early 1980's was **360 millirem** and in 2006 was **620 millirem**. Growth in the use of medical imaging procedures now contributes almost half of the total radiation exposure to the U.S. population.

Early 1980s



2006

2009

